

PT 97-36

Tax Type: PROPERTY TAX

Issue: Charitable Ownership/Use
Religious Ownership/Use

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS

Q. C. LIGHTHOUSE OUTREACH)		
CENTER)		
Applicant)		
)	Docket #s	94-81-108
v.)		94-81-109
)	Parcel Index #s	09-3455
THE DEPARTMENT OF REVENUE)		09-3454
OF THE STATE OF ILLINOIS)		

RECOMMENDATION FOR DISPOSITION

Synopsis:

The hearing in these matters was held on June 4, 1996, at the Willard Ice Building, 101 West Jefferson Street, Springfield, Illinois, to determine whether or not Rock Island County Parcel Index Nos. 09-3455 and 09-3454 should be exempt from real estate taxation for the 1994 assessment year.

Ms. Patricia L. Paxton, director of the Q. C. Lighthouse Outreach Center (hereinafter referred to as the "Applicant") and Mr. Victor Bally, accountant for the applicant, were present and testified on behalf of the applicant.

The issues in these matters include, first, whether the applicant was the owner of these parcels during the 1994 assessment year; secondly, whether the applicant is a religious or a charitable organization; and lastly, whether the applicant was either adapting these parcels for exempt use during 1994 or actually used these parcels for religious or charitable purposes during that year. Following the submission of all of the evidence and a review of the record, it is determined that the applicant did not own these parcels during the 1994 assessment year. It is further determined that the applicant is a religious and a charitable organization. Finally, it is determined that the

applicant was either adapting portions of these parcels for charitable use or actually using portions of these parcels for charitable purposes during the 1994 assessment year. Since the applicant did not own these parcels for real estate tax purposes during 1994, these parcels do not qualify for exemption during the 1994 assessment year.

Findings of Fact:

1. The position of the Illinois Department of Revenue (hereinafter referred to as the "Department") in these matters, namely that these parcels did not qualify for exemption during the 1994 assessment year, was established by the admission in evidence of Department's Exhibit Nos. 1 through 5A.

2. Docket No. 94-81-108 concerns Rock Island County Parcel Index No. 09-3455. This parcel is legally described as Lot 61 in Franklin School Addition to the Township of Rock Island, Rock Island County, Illinois. This parcel is improved with 2 two-story brick apartment buildings which are commonly known as 1410 8th Street front and 1410 8th Street rear. (Dept. Ex. Nos. 1 & 1D)

3. Docket No. 94-81-109 concerns Rock Island County Parcel Index No. 09-3454. This parcel is legally described as Lot 60 in Franklin School Addition to the Township of Rock Island, Rock Island County, Illinois. This parcel is improved with a two-story brick apartment building which is commonly known as 1408 8th Street. (Dept. Ex. Nos. 1E & 1G)

4. These parcels were acquired to provide transitional housing for women coming out of abusive situations, including alcohol, drugs, and physical abuse. Some of these women also had their children with them. (Tr. p. 18, Dept. Ex. No. 1S)

5. The applicant was incorporated pursuant to the General Not For Profit Corporation Act of Illinois on February 8, 1993. The purpose clause of the articles of incorporation of the applicant provides as follows:

To provide aid and comfort to individuals and families in need of food and shelter and to minister to their spiritual needs by bringing

the life saving message of Jesus Christ which provides hope and encouragement for their future. (Dept. Ex. No. 1I)

6. Patricia L. Paxton purchased these parcels at the Rock Island County tax sale on November 8, 1991. (Dept. Ex. No. 3G)

7. Ms. Paxton made payments on these parcels and Rock Island County Parcel Index No. 09-3455 was conveyed to her on May 4, 1993. (Dept. Ex. No. 1D)

8. After she had made the payments, a deed was also conveyed to Ms. Paxton concerning Rock Island County Parcel Index No. 09-3454 on March 11, 1993. (Dept. Ex. No. 1G)

9. On March 22, 1994, Ms. Paxton, as seller, entered into a contract for deed with the applicant, as buyer, to sell these two parcels and the buildings thereon to the applicant for \$28,000.00. This contract for deed did not require a down payment, but did require that the applicant make monthly payments to Ms. Paxton of \$150.00 per month, beginning on April 1, 1994. The loan amortization sheet attached to this contract for deed contains a signed amendment which reads as follows:

This agreement is amended to start March 1, 1995 not April 1, 1994 per agreement between the parties. (Dept. Ex. No. 1H)

10. The agreement was amended to begin monthly payments eleven months later than the original date. The applicant did not have the money to begin making the payments before that date. (Tr. p. 16)

11. On December 31, 1994, the applicant had completed the renovation work on 1410 front, and all four apartments were occupied. Also, by that date, the renovation of one apartment at 1408 had been completed and it was ready for occupancy. (Tr. p. 13 & Dept. Ex. Nos. 3F & 3G)

12. By the date of the hearing in this matter, 1408 was completed and the apartments were all occupied. The applicant then began working on 1410 rear. (Tr. p. 12, Dept. Ex. No. 3G)

13. In view of the fact that the applicant is a not-for-profit corporation, I find that the applicant does not have any capital stock or shareholders and no one profits from the enterprise.

14. A review of the applicant's income and expense statement for 1994 indicates that the applicant's primary sources of income during that year were charitable contributions and rental income. (Dept. Ex. No. 3H)

15. The applicant's lease form, which is signed by all tenants, contains a late payment charge. Ms. Paxton testified that said provision has not been enforced. (Tr. p. 14)

16. The lease form also includes a termination for nonpayment of rent clause, which the applicant asserts has never been enforced. (Tr. p. 15)

17. The lease also contains a default provision concerning a lessee's failure to make any payments required by the lease or the failure to perform any agreement under the lease, which the applicant has also not enforced. (Tr. p. 15)

18. In addition, the applicant has waived or reduced the rent in cases of need. (Tr. p. 15)

19. During 1994, Ms. Patricia L. Paxton, the director of the applicant, lived in apartment No. 1 in the 1410 front, building. (Dept. Ex. No. 3F)

20. Since the women and their children who are the residents of these buildings have come from formerly abusive situations, it is necessary that the director live on the premises for security reasons and to maintain order. (Tr. p. 18)

Conclusions of Law:

Article IX, Section 6, of the Illinois Constitution of 1970, provides in part as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

35 **ILCS** 200/15-40 exempts certain property from taxation in part, as follows:

All property used exclusively for religious purposes, or used exclusively for school and religious purposes . . . and not leased or otherwise used with a view to profit, is exempt

35 **ILCS** 200/15-65 exempts certain property in part, as follows:

All property of the following is exempt when actually and exclusively used for charitable or beneficent purposes, and not leased or otherwise used with a view to profit:

- (a) institutions of public charity;
- (b) beneficent and charitable organizations incorporated in any state of the United States

It is well settled in Illinois that when a statute purports to grant an exemption from taxation, the fundamental rule of construction is that a tax exemption provision is to be construed strictly against the one who asserts the claim of exemption. International College of Surgeons v. Brenza, 8 Ill.2d 141 (1956); Milward v. Paschen, 16 Ill.2d 302 (1959); and Cook County Collector v. National College of Education, 41 Ill.App.3d 633 (1st Dist. 1976). Whenever doubt arises, it is to be resolved against exemption, and in favor of taxation. People ex rel. Goodman v. University of Illinois Foundation, 388 Ill. 363 (1944) and People ex rel. Lloyd v. University of Illinois, 357 Ill. 369 (1934). Finally, in ascertaining whether or not a property is statutorily tax exempt, the burden of establishing the right to the exemption is on the one who claims the exemption. MacMurray College v. Wright, 38 Ill.2d 272 (1967); Girl Scouts of DuPage County Council, Inc. v. Department of Revenue, 189 Ill.App.3d 858 (2nd Dist. 1989) and Board of Certified Safety Professionals v. Johnson, 112 Ill.2d 542 (1986).

From the applicant's articles of incorporation, it appears that the applicant is organized for both religious and charitable purposes. In the case of Fairview Haven v. Department of Revenue, 153 Ill.App.3d 763 (4th Dist. 1987) the Appellate Court determined that where an applicant contends that a property is used for both religious and charitable purposes, the Department may determine which is the primary purpose and which is the incidental purpose. Based on the findings of fact, I conclude that the applicant is attempting to use these parcels for primarily charitable purposes, and the religious use thereof is merely incidental.

To qualify for an exemption from taxation as a charity, the applicant must demonstrate that there is ownership by a charitable organization and use for charitable purposes. Fairview Haven v. Department of Revenue, 153 Ill.App.3d 763 (4th Dist. 1987) and Christian Action Ministry v. Department of Local Government Affairs, 74 Ill.2d 51 (1978).

In the case of Christian Action Ministry v. Department of Local Government Affairs, 74 Ill.2d 51 (1978) the Supreme Court held that the contract purchaser pursuant to a contract for deed, qualified as the owner for real estate taxation purposes. In that case the Court pointed out that the Ministry had a substantial monetary interest in the property having made a large down payment as well as a number of monthly payments. The Court concluded that this was quite similar to a purchase money mortgage situation.

While the applicant in this case had executed a contract for deed to purchase these parcels from Ms. Paxton, on March 22, 1994, there was no down payment required by the contract. Pursuant to the amendment, the monthly payments of \$150.00 did not begin until March 1, 1995. Consequently, while there was an executed contract for deed during the period March 22, 1994, through December 31, 1994, the applicant had no monetary interest in the purchase of these parcels. I therefore conclude that Ms. Patricia L. Paxton, an individual, owned these parcels during the 1994 assessment year.

I therefore conclude that the applicant has failed to establish that it owned these parcels for property tax exemption purposes during the 1994 assessment year.

I therefore recommend that Rock Island County Parcel Index Nos. 09-3455 and 09-3454 remain on the tax rolls for the 1994 assessment year and that said parcels be assessed to Patricia L. Paxton, the owner thereof, for that year. I would suggest to the applicant that it may wish to file an application for exemption for these parcels for a period after the monthly payments on these parcels were being paid pursuant to the contract for deed.

Respectfully Submitted,

George H. Nafziger
Administrative Law Judge
July 15, 1997